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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 569

ANDERSON-PRICHARD OIL CORPORATION,
Appellant,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

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A CORPORATION,
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vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND REFORD BOND, RAY O. WEEMS, AND RAY C. JONES, AS MEMBERS OF THE CORPORATION COMMISSION; SINCLAIR-PRAIRIE OIL AND GAS COMPANY, A CORPORATION, PHILLIPS PETROLEUM COMPANY, A CORPORATION, OKLAHOMA NATURAL GAS COMPANY, A CORPORATION, AND STANOLIND OIL AND GAS COMPANY, A CORPORATION,

Appellees

STATEMENT IN OPPOSITION TO THE JURISDICTION OF THE SUPREME COURT AND MOTION TO DISMISS.

Pursuant to Paragraph 3 of Rule 12 of this Court, the Corporation Commission of the State of Oklahoma, and Reford Bond, Ray O. Weems and Ray C. Jones, as members of the Corporation Commission, Sinclair Oil & Gas Company (shown above as Sinclair-Prairie Oil and Gas Company), a corporation, and Oklahoma Natural Gas

Company; a corporation, these being some of the appellees above named, file this statement disclosing the basis upon which appellees contend that this Court does not have jurisdiction upon appeal to review the judgment of the Supreme Court of Oklahoma in the case of Anderson-Prichard Oil Corporation, Plaintiff in Error *vs.* Corporation Commission of the State of Oklahoma, et al., Defendants in Error, No. 34,283 on the docket of said Court, dated October 2, 1951, and in connection therewith include herein their motion to dismiss the appeal in this case.

Said appellees move the Court to dismiss this appeal for the reason that the appellant fails to present a substantial Federal question, and in connection therewith said appellees respectfully show the following:

Title 52, Section 239, of the Statutes of the State of Oklahoma provides as follows:

> "Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from

any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another. Laws 1915, ch. 197, § 4."

The record in this case discloses the following facts:

In 1946, the production of gas was obtained from three separate strata underlying an area in Grady County, Oklahoma, now known as the Chickasha Gas Field. The three productive sands are known as the Charlson sand, the Glover sand and the Pooler, sometimes referred to as the Pooler Mona, sand. Appellant is concerned here with only the Pooler or Pooler Mona sand. In 1947 it was determined by the Corporation Commission of Oklahoma that because of the possibility of waste of gas and a possible violation of the correlative rights of the various owners and operators of gas wells within the Chickasha Gas Field, the production of gas from said field should be regulated by the Corporation Commission. Therefore, upon the application of Walter T. Pound, Conservation Director of the State of Oklahoma, various hearings were had in Cause CD 1463 and as a result thereof and under the authority conferred upon it by Title 52, Section 239, of the Statutes of Oklahoma, above quoted, on October 30, 1947, the Commission made and entered its Order No. 20536. This established a formula governing the withdrawal of gas from the Chickasha Gas Field. The formula contains three factors, to-wit:

(a) Productive ability or potential of the well;
(b) Pressure;
(c) *Productive* acreage.

The only factor questioned by appellant is the "acreage factor."

The purpose and effect of the formula is to permit each operator to produce his fair share and only his fair share of the gas contained in the common reservoir.

In order that the *productive* acreage factor in the formula could be used, it was necessary that the Commission determine the productive limits of the various sands underlying the Chickasha Gas Field. This was done by extensive expert testimony and the Commission attached to its Order No. 20536 a plat defining what it had determined to be the productive limit of the Pooler sand. The Commission also determined that appellant's Thomas lease containing one hundred sixty acres was underlaid by fifty-seven acres of *productive* sand in the Pooler zone. Therefore, said lease was assigned an acreage factor of fifty-seven for use in the formula. The Commission further determined that the maximum amount of productive sand which could be adequately drained by one well in the Chickasha Gas Field was that underlying one hundred sixty surface acres and therefore the Commission established a maximum productive acreage factor of one hundred sixty. A copy of Order No. 20536, together with the exhibits attached thereto, is included in appellant's statement of jurisdiction and will not be repeated here. Order No. 20536 was not appealed from and became final.

In February 1949, Anderson-Prichard Oil Corporation filed its application before the Corporation Commission to amend and modify Order No. 20536 by extending the western productive limit of the Pooler sand (as established by Order No. 30536) further to the west to conform to lease boundary lines. This would afford appellant's Thomas lease an acreage factor of one hundred sixty. This application was docketed as Cause CD 2019. Such

cause was heard April 27, 1949, and resulted in Order No. 22506 wherein the Corporation Commission determined that there was no change of fact or condition which would justify extending the productive limits of the Pooler zone to include any additional acreage in Anderson-Prichard's lease and Anderson-Prichard's application was denied. A copy of Order No. 22506 is included in appellant's statement of jurisdiction and will not be repeated here. Anderson-Prichard Oil Corporation appealed from Order No. 22506 and the Supreme Court of Oklahoma sustained the order of the Corporation Commission. A copy of the decision of the Supreme Court of Oklahoma is attached to appellant's statement of jurisdiction and will not be repeated here.

It should be pointed out here that neither Order No. 20536 nor Order No. 22506 was a spacing order or had the effect of a spacing order since they did not establish drilling and spacing units of any size nor prescribe the location of any well nor communitize the royalty interests under any tracts; that all lessees and operators within the Chickasha Gas Field were treated the same by said order; that there has been no annihilation of appellant's Thomas lease, as evidenced by the fact that it still owns said lease and has the right to drill any additional wells thereon which it may desire; that the only way in which acreage is involved in this case is that it is one factor in a formula which is used to regulate the production of gas from wells producing from the common reservoir underlying the Chickasha Gas Field; that an acreage factor of one hundred sixty may be used for a well only in the event such well has attributed to it one hundred sixty acres of *productive* sand as determined by the Corporation Commission; that the statute above quoted prescribes that the Corporation Commission shall have "due regard to the

acreage drained by each well", and only *productive* acreage can be drained.

Appellees further show that the express purpose and effect of Order No. 20536 was to prevent waste and to protect the correlative rights of the various operators and owners of gas by prescribing a formula which regulated the taking of gas from the various wells producing from a common reservoir underlying the Chickasha Gas Field to the end each would receive his fair proportionate share of the gas in said reservoir; that the effect of Order No. 22506 was to refuse to disturb the formula theretofore prescribed by Order No. 20536 and particularly the acreage factor used in such formula.

Inasmuch as this is an action involving only the question of the authority of the State of Oklahoma to regulate under its police power the taking of gas by various operators producing from a common reservoir of gas for the purpose of preventing waste and protecting the correlative rights of such operators, and the authority of a state to regulate such a taking has been upheld many times by this Court, it is respectfully submitted that no substantial Federal question is presented by appellant herein.

See—

(a) *Ohio Oil Company* v. *Indiana*, 177 U. S. 190, 44 L. Ed. 729, 20 S. Ct. 576;

(b) *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 55 L. Ed. 369, 31 S. Ct. 337, Ann. Cas. 1912 C, 160;

(c) *Walls* v. *Midland Carbon Company*, 254 U. S. 300, 65 L. Ed. 276, 41 S. Ct. 118;

(d) *Bandini Petroleum Co.* v. *Superior Court*, 284 U. S. 8, 76 L. Ed. 136, 52 S. Ct. 103, 78 A. L. R. 826;

(e) *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210, 76 L. Ed. 1062, 52 S. Ct. 559, 86 A. L. R. 403;

(f) *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, 76, 77; 81 L. Ed. 510, 521, 522, 57 S. Ct. 364;
(g) *Russell B. Patterson* v. *Stanolind Oil and Gas Co.*, 305 U. S. 376, 83 L. Ed. 231, 59 S. Ct. 259;
(h) *Hunter* v. *McHugh*, 320 U. S. 288, 88 L. Ed. 9, 64 S. Ct. 21;
(i) *Cities Service Gas Company* v. *Peerless Oil and Gas Co.*, 340 U. S. 179, 95 L. Ed. 190, 71 S. Ct. 215.

Wherefore, said appellees pray that the appeal be dismissed.

Respectfully submitted,

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CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and REFORD BOND, RAY O. WEEMS and RAY C. JONES, as members of the Corporation Commission; SINCLAIR-PRAIRIE OIL AND GAS COMPANY, a corporation; PHILLIPS PETROLEUM COMPANY, a corporation; OKLAHOMA NATURAL GAS COMPANY, a corporation, and STANOLIND OIL AND GAS COMPANY, a corporation,

Appellees.

APPELLANT'S BRIEF OPPOSING MOTION OF APPELLEES TO DISMISS APPEAL

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CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and REFORD BOND, RAY O. WEEMS and RAY C. JONES, as members of the Corporation Commission; SINCLAIR-PRAIRIE OIL AND GAS COMPANY, a corporation; PHILLIPS PETROLEUM COMPANY, a corporation; OKLAHOMA NATURAL GAS COMPANY, a corporation, and STANOLIND OIL AND GAS COMPANY, a corporation,

Appellees.

APPELLANT'S BRIEF OPPOSING MOTION OF APPELLEES TO DISMISS APPEAL

Appellant files this Brief in opposition to the Motion of appellees to Dismiss the Appeal, as provided in Paragraph 3 of Rule 7.

The facts as set forth in the Motion to Dismiss are not sufficient to present a true picture of the situation which obtains with respect to the rights of appellant involved in this appeal, nor do the appellees in their motion point out wherein appellant fails to present a substantial Federal question. The pivotal facts, which are undisputed and on which the rights of appellant depend, were overlooked and are not set forth in appellees' Motion to Dismiss the appeal.

STATEMENT OF FACTS

Here are the undisputed facts as appear from the Statement of Jurisdiction and the record:

1. Prior to the year 1947, appellant secured an oil and gas lease on the Southwest Quarter of Section 27, Township 5 North, Range 8 West, in Grady County, Oklahoma, located in what is now the Chickasha Gas Field.

2. In 1936, gas was discovered in what is known as the Pooler Zone on land located about one mile to the north of the land covered by appellant's lease, and also in the same pool gas was discovered on land located about five-eighths of a mile to the southeast; and while there were others wells to the northeast and to the southeast of the land covered by appellant's lease, producing from the Pooler Zone, yet there was no well in the Pooler Zone closer to the land covered by appellant's lease than the two wells mentioned.

3. In the spring and summer of 1947, appellant drilled a well known as Thomas No. 1 Well in the center of northeast ten acres of the Southwest Quarter of Section 27, and it was drilled full depth and into the Pooler Zone. Prior to the drilling above mentioned, the Corporation Commission of Oklahoma had never exercised any jurisdiction whatsoever over the Chickasha Gas Field and all operators in the field, as was proper, located and drilled their wells on their respective leases at such places as they desired, just as the appellant did in the location of its Thomas No. 1 Well. While this freedom to locate wells resulted in lack of system in development, and in wells being located at various places on the different leases in the field, yet this was a common practice and was legal.

4. On October 30, 1947, after the development of the Chickasha Gas Field as above set forth, the Corporation Commission issued its Order No. 20536, and in this order determined the amount of acreage attributable to each well in the field, including the Thomas No. 1 Well; and, over the objection of appellant, 57 acres was determined as the acreage attributable to the Thomas No. 1 Well, and, in the event of production from the Thomas No. 1 Well, 57 was to be the acreage factor used in the formula for the allocation and apportionment of gas which could be produced from the Pooler Zone through the Thomas No. 1 Well, instead of 160, the

maximum acreage factor fixed for the field. The point was made by the Corporation Commission, when appellant objected to the fixing of 57, instead of 160, as the acreage factor to be used in apportioning gas to the Thomas No. 1 Well, that the well had not been then placed on production, and while it was known that gas had been found in the Pooler Zone in the well, yet it might never be a commercial producer and therefore appellant was not in position to complain until after the well was actually placed on production. Appellant concurred in that view and nothing further was done in the way of questioning the right of the Corporation Commission to establish 57 as the acreage factor until the well was placed on production from the Pooler Zone.

5. Due to market conditions, there was a delay in placing the Thomas No. 1 Well on production, but on September 22, 1948, the well was equipped and placed on production from the Pooler Zone. It developed that the well was one of the largest producers in the Chickasha Gas Field, and had a thicker sand body in it than any well in the field. It will be noted that in Order No. 20536, the Commission had fixed 160 as the maximum acreage factor in the field, because it was determined by the Corporation Commission that one well on each 160 acres would adequately drain the gas from under the 160-acre tract.

6. After the well had been thus completed, and the productivity of the well definitely established, appellant insisted before the Corporation Commission that it was entitled to have 160, instead of 57, used as the acreage factor in apportioning gas which might be produced from the Pooler Zone through its Thomas No. 1 Well; and, upon being denied this right, the appellant filed its application before the Corporation Commission to amend Order No. 20536 so as to have the so-called western boundary line of the Pooler Zone extended to include the entire 160 acres of land covered by appellant's lease, and also any other land similarly situated, and thereby secure an acreage factor of 160. This resulted in Order No. 22506, issued by the Corporation Commission on June 17, 1949, refusing to grant the modification, and by this refusal, 57 instead of 160 was definitely fixed by the Corporation Commission as the acreage factor for the apportionment and allocation of gas which might be produced from the Pooler Zone through the Thomas No. 1 Well.

This last Order No. 22506, and incidentally Order No. 20536, are the orders involved in this appeal, as well as Sec. 239, 52 O.S. 1941. These orders, as well as the statute, are set forth in appellant's Statement of Jurisdiction and will not be repeated here.

SUMMARY OF THE FACTS

The facts, briefly stated, are:

1. Before the Corporation Commission attempted to exercise any jurisdiction whatsoever over the Chickasha Gas Field:

a. Appellant had procured an oil and gas lease covering 160 acres of land.

b. The 160-acre tract of land covered by appellant's lease was virtually in wildcat territory, there being no gas well near by.

c. Under these circumstances, appellant had drilled its Thomas No. 1 Well full depth and had discovered gas in the Pooler Zone; and the well later proved to be one of the best wells in the entire field.

d. The well was drilled at a place where appellant had a right to drill its well, the right of location being exercised by appellant as other operators in the field had exercised such right.

e. Appellant was engaged in a lawful business and was conducting the operation of its well in a proper manner.

f. There was no waste of gas, and the question of waste is not in anywise involved in this case; nor has there been any charge of improper conduct on the part of appellant.

g. When the Corporation Commission assumed jurisdiction over the Chickasha Gas Field and super-

imposed its Order No. 20536 over the field, which order, notwithstanding appellees' contention to the contrary, was in effect a well-spacing order, the Chickasha Gas Field was already a developed gas field. It had been, as is usual when there had been no well-spacing order put into effect, developed in an irregular fashion but in a lawful manner, according to the ideas of the various lease owners in the field.

I.

When appellant drilled its Thomas No. 1 Well and secured production and thereby thus developed its lease covering the 160-acre tract, appellant then and there became the owner of a vested estate and vested property rights in the lease, and became entitled to the protection of the constitutional guaranties.

There can be no question but that appellant owned a vested estate in the oil and gas lease when the Corporation Commission assumed jurisdiction over the Chickasha Gas Feld. This assertion is sustained by the following cases:

Brennan v. *Hunter*, 68 Okl. 112, 172 P. 49;

Woodworth v. *Franklin*, 85 Okl. 27, 204 P. 452.

And as the owner of such a vested estate, appellant was entitled to the following rights and privileges, as set forth in the decisions of the Supreme Court of Okla-

homa, in *H. F. Wilcox Oil & Gas Co.* v. *Bond*, 173 Okl. 348, 48 P. 2d 820, where the court said:

> "It is a rule of property in this State, except as modified by a proper exercise of the police power, that * * * a lessee for oil and gas purposes, becomes the owner of all the oil and gas that he may produce from his wells, whether the oil and gas originally inhabited his own land or were drained from neighboring lands."

In *Gruger* v. *Phillips Petroleum Co.*, 192 Okl. 259, 135 P. 2d 485, the Supreme Court of Oklahoma again stated the rule as follows:

> "The law of capture, under which oil and gas is owned by the one lawfully reducing it to possession, still obtains in Oklahoma, except as it has been or may be regulated or restricted under laws passed in the exercise of the police power, such as the proration and spacing statutes and city zoning ordinances."

While a vested estate in the State of Oklahoma is subject to a reasonable exercise of the police power of the State, as above set forth, yet such an estate cannot be annihilated under the guise of regulation, protection of correlative rights, or for any other reason.

Oklahoma Natural Gas Co. v. *Choctaw Gas Co.*, 236 P. 2d 970, decided by the Supreme Court of Oklahoma September 18, 1951, not yet officially reported;

Grison Oil Co. v. *Corporation Comm.*, 186 Okl. 548, 99 P. 2d 134;

Peppers Refining Co. v. *Corporation Comm.*, 198 Okl. 451, 179 P. 2d 899.

Notwithstanding the above undisputed factual situation and the rights of appellant, as defined and explained by the various decisions of the Supreme Court of Oklahoma, the Corporation Commission, under the guise of protecting correlative rights, superimposed what in effect appellant asserts was a well-spacing order over this developed gas field, in which the unit of development was fixed at 160 acres, limited in effect to one well on each unit because one well was considered sufficient to drain adequately the gas therefrom; and appellant makes the further assertion that the superimposed well-spacing order went much further, as we shall presently point out, than the well-spacing orders which are usually put into effect in oil and gas fields.

This assertion is made in face of the fact that appellees, at Page 3 of their Motion to Dismiss the appeal, make the following statement:

> "It should be pointed out here that neither Order No. 20536 nor Order No. 22506 was a spacing order or had the effect of a spacing order since they did not establish drilling and spacing units of any size, nor prescribe the location of any well, nor communitize the royalty interests under any tracts."

Appellant feels impelled to say that it is very patent why appellees would deny that the orders of the Corporation Commission are in effect superimposed well-spacing orders. No group is more familiar than appellees with what is always done in any oil or gas field when a well-spacing order is superimposed over such a field after

it has been partially developed. Everyone knows that in such a situation every well in the field, whether off pattern or not, is validated and the unit upon which the well happens to be located is given a full allowable. This is done because vested estates and vested propery rights cannot be destroyed by subsequent statutes or orders of the Corporation Commission. It is really immaterial in this case whether the Court should hold the orders are superimposed well-spacing orders or not. It is still an elementary principle of law that what was legal when it was done cannot be subsequently made illegal by legislative action or by order of the Corporation Commission. In this case, appellant drilled a well which when drilled entitled it to a 100% allowable, and by the action of the Corporation Commission the well was reduced from a 100% well to a 35% well; or, to state it another way, appellant was, by the action of the Corporation Commission, deprived of the benefit of 65% of its well.

It will be noted that, in the above quoted language, the appellees set forth three reasons why they say the orders are not in effect superimposed well-spacing orders. From an examination of each of the alleged reasons, separately, the fallacy of appellees' assertion can be readily seen:

a. "They (the orders) did not establish drilling and spacing units of any size."

A study of the orders leads to the irresistible conclusion that they most emphatically fixed the drilling and spacing unit at 160 acres; and undertook, among other things, to apportion production on the basis of acreage in each unit, and that same thing is done in every well-spacing order. Of course, if a unit should be less than 160 acres, then the allocation to the well on that unit would be reduced accordingly.

b. "Nor prescribed the location of any well."

Inasmuch as wells had already been drilled on most of the tracts at the time the Corporation Commission superimposed its orders over the field, the Corporation Commission could not specify where the wells should be located, but had to regard those wells as properly located, as is always done when a well is drilled off pattern before a well-spacing order is put into effect over the field in which such off pattern wells are located.

c. "Nor communitize the royalty interests under any tracts."

There was nothing said in the order about communitizing royalty interests, but doubtless the Corporation Commission determined that the royalty under each lease in the field was owned entirely by one or more persons, as individuals or as tenants in common, as is the case with respect to the royalty under appellant's lease covering the 160-acre tract of land on which the Thomas No. 1 Well is located; and this being true there was no neces-

sity for the Corporation Commission to make any order whatsoever with respect to royalties. However, if it should develop at any time as it often does, that the royalty under any particular lease or unit is not owned by the same person or the same group of persons, either as individuals or as tenants in common, then the Commission simply makes an order covering the particular lease or unit specifying how the royalty shall be paid. This is a common practice even in fields where well-spacing orders are designated as such, otherwise, by a mere oversight, a royalty owner could lose his interest. Therefore, the fact that the orders do not particularly communitize royalties has no bearing on the question as to whether the orders are superimposed well-spacing orders or are in fact some other type of order. The fact remains that the royalty under every lease has to be paid to the owner thereof.

Following the above quoted language, the appellees in their Motion to Dismiss the appeal, say further:

> "That all lessees and operators within the Chickasha Gas Field were treated the same by said order; that there has been no annihilation of appellant's Thomas lease, as evidenced by the fact that it still owns said lease and has the right to drill any additional wells thereon which it may desire; that the only way in which acreage is involved in this case is that it is one factor in a formula which is used to regulate the production of gas from wells producing from the common reservoir underlying the Chickasha Gas Field."

The language just quoted does not cover much space, yet it covers three vital points which are far-reaching in their effect, and it takes only a casual consideration of each to enable anyone to see the utter fallacy of appellees' assertion, and the righteousness of appellant's cause and how its constitutional rights have been invaded.

The lessees and operators in the Chickasha Gas Field were not treated alike as appellees assert. In order to assist the Court in its consideration of the various questions growing out of the last above quoted language, appellant has inserted a map in the back of this Brief as Appendix "A", which also appears in appellant's Statement of Jurisdiction, showing the Pooler Zone as it had been developed when Order No. 20536 was issued. Appellant calls attention to the fact that its Thomas No. 1 Well, located in the center of the northeast ten acres of the Southwest Quarter of Section 27, which quarter section is covered by appellant's lease, is marked "*" in red because the well, although drilled to full depth into the Pooler Zone and known to have gas therein, was not on production in the Pooler Zone when Order No. 20536 was issued and, therefore, was omitted from the map attached as a part of the Order; and attention is called to the further fact that the so-called boundary line of the Pooler Zone had not been superimposed over the Chickasha Gas Field at the time the wells shown on the map, including the Thomas No. 1 Well, were drilled. By re-

ferring to this map and the provisions of Order No. 20536, all that the owner of the lease covering the Southeast Quarter of Section 27 has to do in order to have the benefit of 160 as an acreage factor in the formula for the apportionment of gas is to drill one well, and the same is true as to the owner of the lease covering the Northeast Quarter of the same Section 27, and the same can be truly said of other quarter sections in the field. Therefore, it cannot be contended that appellant has been treated like others in the field when its acreage factor in the formula for the apportionment of gas is cut to 57 on the 160-acre tract covered by its lease, when the owners of leases covering the other quarter sections mentioned can drill the same type of well as appellant's Thomas No. 1 Well and have 160 used as an acreage factor in the apportionment and allocation of gas which can be produced from their wells. And the unjustness of the situation also appears most evident when it is recalled that the Thomas No. 1 Well is one of the best wells in the field and has a thicker sand body in it than any well in the field.

Appellees assert in the language quoted from their Motion to Dismiss: "that there has been no annihiliation of appellant's lease, as evidenced by the fact that it still owns said lease and has the right to drill any additional wells thereon which it may desire." Of course, appellees are forced to make an effort to get away from the idea that, when the Corporation Commission took from ap-

pellant 103 acres of its developed 160-acre lease and prorated the gas in the field as though appellant owned a lease covering only 57 acres, the 103 acres were annihilated.

It will be remembered that the only use that appellant has for the lease on 160 acres is to produce gas from it, and when appellant drilled its Thomas No. 1 Well on its lease, which was all that was required, as determined by the Corporation Commission, to drain adequately all the gas from under the 160 acres, it had the right to the full benefit of the 160-acre tract without further drilling; and any action of the Corporation Commission which denied appellant the right to have used 103 acres of the 160-acre tract in apportioning the gas which could be produced through appellant's Thomas No. 1 Well was an annihilation or confiscation of appellant's rights; and appellees, by saying that there was no annihilation of appellant's lease insofar as it covered the 103 acres because it still has title thereto and could drill additional wells thereon, did not alter the fact that there had been an annihilation of appellant's vested estate and vested property rights in 103 acres of its lease, and they overlooked some very important decisions of the Supreme Court of the United States.

In *Chicago, R. I. & P. Ry. Co.* v. *United States*, 284 U.S. 80, 96, the law is stated as follows:

> "Confiscation may result from a taking of the use of property without compensation quite as well as from the taking of the title."

In *Chicago, M. & St. P. Ry. Co.* v. *State of Minnesota*, 134 U.S. 418, 456, the Court, after upholding the right of the State to regulate the railroad, used the following language:

> "* * * 'From what has thus been said, it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation.' "

The action of the Corporation Commission with reference to the 103 acres is tantamount to taking that 103 acres away from appellant and giving the other operators in the Chickasha Gas Field the benefit of the 103 acres.

As to the suggestion that appellant can still drill other wells on its lease, let us see where such a suggestion would lead. When the Thomas No. 1 Well was drilled at a cost of approximately $80,000.00, with a potential of 23.4 million cubic feet of gas per day, and the Corporation Commission attributed to the well only 57 acres, instead of the 160 acres covered by the lease, which was tantamount to reducing a 100% well to approximately a 35% well, if appellant should follow the suggestion that it drill other wells, and it should drill its Thomas No. 2 Well, at a similar cost of approximately $80,000.00, on the lease and it should prove to have a po-

tential of 23.4 million cubic feet of gas per day, then on the assumption that the Thomas No. 1 Well was entitled to have attributed to it only 57 acres, 57 acres should be attributed to the Thomas No. 2 Well and appellant would have two 35% wells on its lease; then there would still be 46 acres of the 160 acres that would not be attributable to any well, or used as any part of the acreage factor, and, in order to get the full benefit of the 160 acres, it would still be necessary to drill its Thomas No. 3 Well, at a similar cost of approximately $80,000.00, which, owing to the amount of acreage on which it would be located could be approximately only a 30% well. The sum total of all this additional suggested drilling is that, in order for appellant to have the equivalent of one 100% well and to get the benefit of its entire 160-acre lease by having 160 used as the acreage factor in the allocation and apportionment of gas which can be produced from its lease, it had to drill three wells at an aggregate cost of approximately $240,000.00, and if it should turn out that Well No. 3 had a less daily capacity to produce than the other two wells, the appellant would still not receive as much production from its three wells as it would be entitled to receive if the gas were apportioned to its Thomas No. 1 Well on the basis that one well was all that was necessary to be drilled on the 160-acre tract in order to have the full benefit thereof. To follow the suggestion that appellant can secure the

benefit of his lease by drilling additional wells does not cover up the fact that 103 acres of appellant's lease have been annihilatd, but it very definitely shows the great discrimination that has been made against the appellant with respect to its vested estate and vested property rights in the oil and gas lease that it developed by drilling its Thomas No. 1 Well which was the only well that could be required of appellant to be drilled on the 160-acre tract covered by its lease if appellant were to be treated as other operators in the field. Even in the illustration predicated on the suggestion of additional drilling, no operator in the field, regardless of the number of wells he might drill, could receive the benefit of more than one well on a 160-acre tract, since the Corporation Commission determined in its order that one well was sufficient to drain adequately the gas from under a 160-acre tract. Therefore, any additional drilling would be a useless and nonsensical expenditure of money.

It is also very interesting to note how appellees, in the last above quoted language, undertook to minimize the acreage factor used in the formula for the allocation and apportionment of gas which may be produced from any well when they assert "the only way in which acreage is involved in this case is that it is one factor in a formula which is used to regulate the production of gas from wells producing from the common reservoir underlying the Chickasha Gas Field." Appellant asserts, not-

withstanding the effort of appellees to minimize what has been done to appellant and its vested property rights when they referred to the acreage factor in the manner just stated, that the acreage factor in any well-spaced area is the chief factor in the allocation and apportionment of production. No better illustration of the correctness of this assertion can be produced than to see how the interest of appellant in this case was adversely affected by providing, in the formula for the allocation and apportionment of gas which could be produced from its Thomas No. 1 Well 57 as the acreage factor instead of 160. By this method, the Thomas No. 1 Well was reduced from a 100% well to approximately a 35% well, and when it is remembered that the well's capacity to produce gas was 23.4 million cubic feet of gas per day, one-fourth of which, under the laws of Oklahoma, could have been produced daily from the well had the acreage factor been fixed at 160, and the well was reduced to only a 35% well, then appellant could produce only 35% of one-fourth of 23.4 million cubic feet per day, or 2.05 million cubic feet, which was a loss of 3.80 million cubic feet of gas per day, which, when valued in dollars and cents, makes it evident that the appellant has lost thousands and thousands of dollars by fixing the acreage factor at 57 instead of 160, so the acreage factor cannot be minimized; and, furthermore, the reduction of the 100% well to only a 35% well was tanta-

mount to taking 65% of appellant's well and distributing it among the other operators in the Chickasha Gas Field.

II.

Citation and discussion of additional authorities showing a substantial Federal question.

Appellees, in their Motion to Dismiss the appeal, appear to be consoled by the fact that Order No. 20536 was issued by the Corporation Commission pursuant to Sec. 239, 52 O.S. 1941, it being claimed by the appellees that, since the Supreme Court of Oklahoma held that Sec. 239 authorizes the Corporation Commission to make such an order as is involved in this case, that within itself made the Order of the Corporation Commission valid. Appellant asserts that the strained construction which was placed on Sec. 239, as applied to the situation of appellant in this case, made the statute, insofar as it applies to the appellant, violative of the Fourteenth Amendment to the Constitution of the United States. Appellant has just used the phrase "strained construction" and that term was used advisedly. A brief history of oil legislation in Oklahoma will support, as appellant believes, the suggestion that the construction placed on Sec. 239 was a strained construction and rendered it unconstitutional and void as applied to appellant under the factual situation which obtains in the case.

It is common knowledge that oil was first discovered in Oklahoma in 1895, and, until the year 1915 when Sec. 239 was passed by the Legislature of Oklahoma, Sec. 4, Chap. 197, Okla. Session Laws 1915, the law of capture, with slight modifications not involved in this case, was supreme in the production of gas. Sec. 239 was passed to modify the law of capture so that an operator, with a small lease with a well on it, could not take as much gas from his well as an operator who had a well on a larger lease, and also the Act was doubtless designed to prevent an operator from drilling too many wells on his lease and to penalize him for so doing. For instance, if appellant with its lease covering a 160-acre tract, should drill additional wells, as appellees suggested in their Motion to Dismiss, and the total number of wells on the lease should be three, in face of the fact that one well is sufficient to drain 160 acres, as was determined by the Corporation Commission for the Chickasha Gas Field, then the acreage drained by each well would be 1/3rd of 160, or 53⅓ acres. Therefore, in spite of the number of wells drilled, the operator would receive the benefit of the equivalent of only one well.

This, as appellant believes, is what the Legislature had in mind when it enacted Sec. 239, and it is not believed that the Legislature contemplated that it was authorizing the annihilation of vested estates. It will be observed that this statute remained as the laws of Okla-

homa for more than thirty-six years and until October 2, 1951, when the Supreme Court of Oklahoma rendered the decision now involved in this appeal, holding for the first time that the Act authorized the Corporation Commission to annihilate the major portion of a vested estate in a developed oil and gas lease, as in the instant case. If the Corporation Commission is vested with such authority, as the Supreme Court of Oklahoma held in its opinion of October 2, 1951, the Act contravenes the guaranties of the Fourteenth Amendment to the Constitution of the United States. The Act of the Corporation Commission in this case was tantamount to transferring to the other operators in the Chickasha Gas Field 103 acres of appellant's developed lease, as effectively as if the appellant had executed an assignment of the lease to such other operators: and under the above cited cases decided by the Supreme Court of Oklahoma, appellant had a vested estate in that part of the lease attempted to be so transferred.

In *Wilkinson* v. *Leland et al.*, 2 Pet. 627, 657-8, Mr. Justice Story, in rendering the opinion of the court, said:

> "* * * We know of no case in which a legislative Act to transfer the property of A to B without his consent has ever been held a constitutional exercise of legislative power in any State of the Union. On the contrary, it has been constantly resisted as inconsistent with just principles by every judicial tribunal in which it has been attempted to be enforced."

Chippewa Indians v. *United States*,
301 U.S. 358, 375.

The State has no power to divest or to impair vested rights, whether such an attempt to do so be made by legislative enactment, by municipal ordinance, by order of the Corporation Commission, or otherwise.

American Smelting & R. Co. v. *Colorado ex rel. Lindsley*, 204 U.S. 103;
McCullough v. *Commonwealth*,
172 U.S. 102.

Some cases have been cited by appellees dealing generally with the right of the State to exercise police power over property and property rights . Such cases could have no bearing whatsoever on any issue involved in this case for the facts in this case are undisputed and present a special situation to which the ordinary general rules governing the exercise of police power under ordinary circumstances would have no application and would, therefore, shed no particular light upon any question involved. Among the cases which have no application to the issue involved is that group of cases which deal with the question of waste by popping off gas into the air and otherwise dissipating natural resources. The question here is confined to the power of the State to destroy a vested estate and vested property rights which appellant owned in the Chickasha Gas Field at the time the Corporation Commission assumed jurisdiction over the field in the exercise of the police power.

Russell B. Patterson v. *Stanolind Oil & Gas Co.*, 305 U.S. 376, has been cited by appellees as one of the cases sustaining their Motion to Dismiss the appeal herein. Appellant does not believe that the *Patterson case* tends in the slightest degree to sustain the Motion to Dismiss, because the controlling facts are entirely different. It is true that the Court in that case held that the plaintiff failed to raise a substantial Federal question and dismissed the appeal, but when the facts are carefully noted, as appears from the opinion and particularly from the opinion of the Supreme Court of Oklahoma reported in 182 Okl. 155, 77 P. 2d 83, it will be found that when the Corporation Commission superimposed its well-spacing order over the oil field involved in that case, it fixed the unit of development at ten acres, just as it fixed the unit of development in the Chickasha Gas Field at 160 acres. The oil well located on the particular ten-acre tract involved in the *Patterson case* was given a full allowable, exactly as is always done in well-spacing practices, whereas, in the case at Bar, there was apportioned to appellant's well only a 35% allowable, and the Corporation Commission, by this action, annihilated 65% of appellant's Thomas No. 1 Well by depriving appellant of the use of 103 acres of its lease, included in the unit on which the well was located. The Corporation Commission, in the *Patterson case*, did just exactly what appellant has contended throughout this litigation that it should have done with respect to appellant's well

and its 160-acre lease. In the *Patterson case*, everyone who owned an interest in the land in the unit on which the well was located was given the full benefit thereof. In the case at Bar, the appellant was given the benefit of only 35% of its vested estate. Appellant does not believe that, if the facts in the *Patterson case* had been as the facts are in the instant case, the Court would have held that there was no substantial Federal question raised, for in the *Patterson case*, all rights were fully protected, whereas, in the instant case, 65% of appellant's vested estate was annihilated and appellant was denied the benefit thereof.

Prior to the time the Corporation Commission issued its Order No. 20536 and Order No. 22506, appellant had secured its 160-acre lease, had drilled its Thomas No. 1 Well thereon, and had made substantially its entire investment, and virtually all that remained for appellant to do was to reap the benefits thereof. When the Corporation Commission assumed jurisdiction over the Chickasha Gas Field, it took jurisdiction over each separately owned property, and the rights incident thereto, as an entity and as such property then existed. The Corporation Commission had no legal authority to confiscate or annihilate the major portion of any property, as it did appellant's property and then undertake to regulate what was left after such annihilation as though the remainder were the entire property.

As further illustrative of the situation of appellant when the Corporation Commission took its devastating and confiscatory action and the diligence of the courts to protect vested estates and to prevent the impairment of property rights, guarded by the Fourteenth Amendment to the Federal Constitution, appellant calls attention to the following cases:

Dobbins v. *City of Los Angeles*,
195 U.S. 223;

Oklahoma City v. *Dolese Bros.*,
48 F. 2d 734;

Frost v. *Corp. Comm.*,
278 U.S. 515;

Thompson v. *Consolidated Gas Utilities Corp.*, 300 U.S. 55.

The Court used language in the last cited case, *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U.S. 55, 79-80, which so accurately describes what has been done in this case that appellant feels impelled to use the Court's own language to describe what the action of the Corporation in effect was:

> "Our law reports present no more glaring instance of the taking of one man's property and giving it to another. * * * And this court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid."

CONCLUSION

For the foregoing reasons, we respectfully submit that a substantial Federal question has been raised and the Motion to Dismiss the appeal should be denied.

Respectfully submitted,

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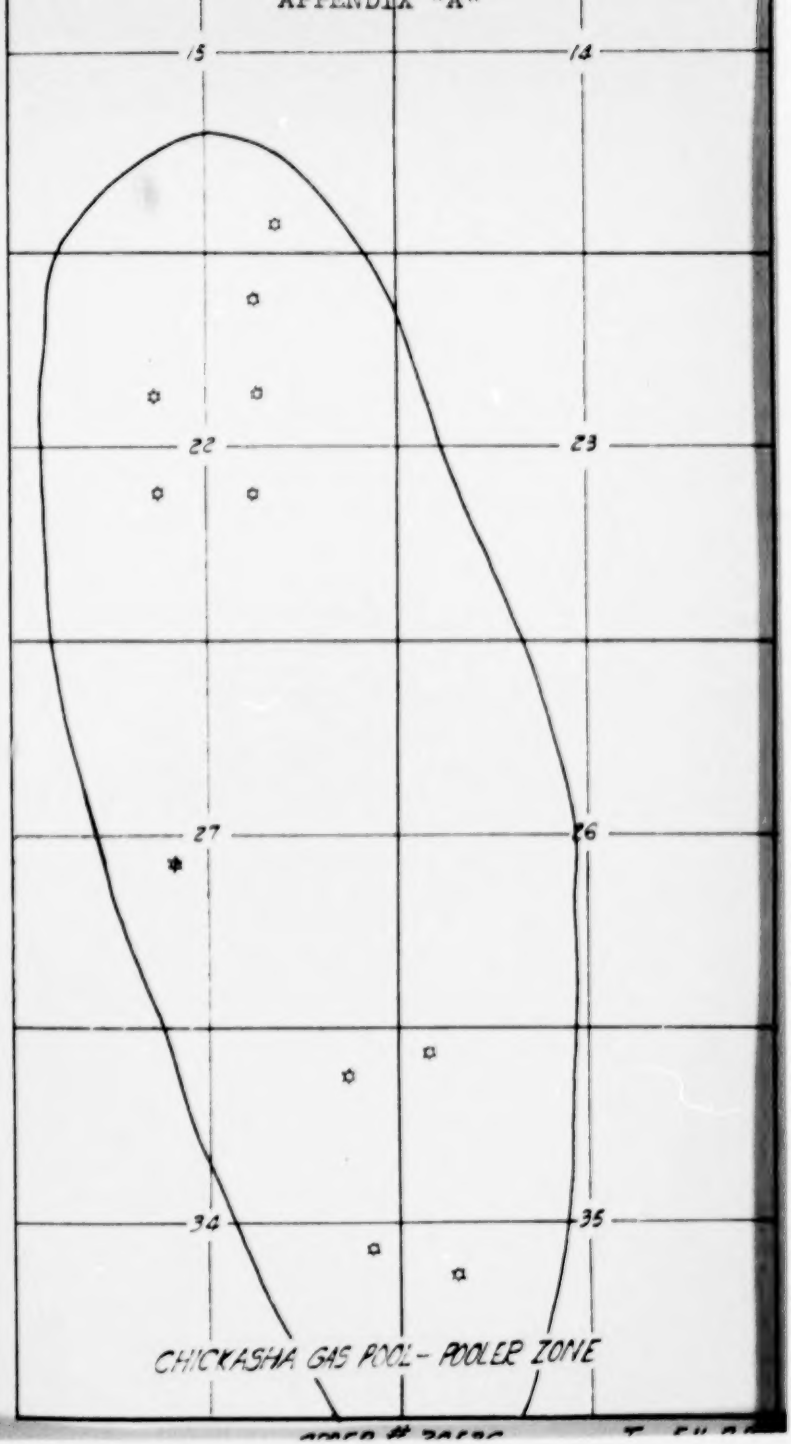
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